IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Suit No.117 of 1985

The State Industrial and
Investment Corporation of
Mah. Ltd. ..Plaintiff

V/s

Shah Steels Industries
Pvt. Ltd. and Ors. ..Defendants

Sanjay Kotak i/b Purnanad and co. for Plaintiff

None present for the defendants

CORAM:S.R.SATHE,J.

DATEE:23rd Dec. 2005

ORAL JUDGMETN>:-

1. The plaintiff has filed this suit against the defendants for recovery of the amount of Rs.8,63,216- with future interest and costs of the suit.

2. The plaintiff's case in brief that plaintiff is a company incorporated under the provisions of Companies Act, 1956. Defendant no.1 is a private limited company carrying on manufacturing of H.B.Wires, Flat Wires,

annealed wires, etc. One D.H.Shah and defendant nos.3,4 and 6 and 7 were the directors of the defendant no.1 company at the relevant time. The said D.H.Shah expired leaving behind defendant nos.2 to 7 as legal heirs. Defendant no.8 is the banking company. Plaintiff and defendant no.1 had introduced a scheme called capital investment scheme for grant of loans to Industrial unites. As per the said scheme and request made by defendant no.1, the defendant no.8 sanctioned term loan facility with a limit of rs.8,38,500/- to the defendant no.1 in which the share of plaintiff was Rs.2,79,520/- and that of the defendant no.8 Rs,5,59,000/-. In August 1974 defendant no.8 enhanced the total limit of Rs.1,92,375/- wherein share of plaintiff was Rs.64,125/-. Then again in February 1974 defendant no.1 enhanced the limit in which plaintiff's share was Rs.1,14,518/-. As per initial scheme amount was disbursed to the defendant no.1. However, defendant no.1 failed to repay the amount as agreed. As per revised repayment schedule defendant was to pay first instalment of loan amount on 31-3-1979 to plaintiff but the defendant failed to pay the same. The defendant no.1 had even executed letter of hypothecation in favour of plaintiff and defendant no.8.

3. As the defendant nos.1 to 7 failed to pay the amount the defendant no.8 filed a suit against the defendant nos.1 to 7 bearing Suit No.1475 of 1982. As the share of the plaintiff was also not repaid by the defendant

nos. 1 to 7 plaintiff filed the present suit.

4. The defendant nos 1 to 7 filed their written statement and opposed the suit claim. They admitted execution of the agreement dated 15-8-1974, deed of hypothecation dated 15-11-1974 and the fact that they received monetary assistance from defendant no.8 in the scheme introduced by the plaintiff and defendant no.8. They also contended that defendant no.8 filed suit NO.1475 of 1982 against them and consent decree dated 16-8-1983 was passed. The defendant nos.1 to 7 contended that movables charged in favour of the plaintiff under agreement were put to sell by the Court Receiver appointed in Suit NO.1475 of 1982. The plaintiffs were entitled to get pro rata share in the sale proceeds of the said movables and as such plaintiff is not entitled to file the present suit.

5. The defendant also contended that the plaintiff has in fact received amount of Rs.8,63,216/- from the defendant no.8. The defendant no.1 to 7 had paid to the defendant no.8 and as such plaintiff had no cause of action to file the present suit. Hence on all these grounds the defendant nos.1 to 7 prayed for dismissal of the suit.

6. On these pleadings the Court (Coram:S.J. Vajifdar,J) has framed the following issues. I have given my findings as mentioned against the same.

i. Whether the suit is bad in law for want of leave under Order XL Rule 1 of C.P.C. against Defendant no.9	No
2. Whether plaint disclosed any cause of action against defendant nos 1 to 7?	Yes
3. Whether suit is barred by law of limitation?	No
4. Whether the plaintiffs prove that any amount is due and payable by Defendant no.1 to 7?	As stated below in final order.
5. Whether defendant nos.1 to 7 prove that no amount is due and payable by Defendant nos.1 to 7 to the plaintiffs as alleged in paragraph 5 of the written statement?	No
6. Whether the plaintiffs prove that they are entitled to charge any interest or compound interest from the defendants?	Yes, but only

pay to filing of suit.

7. In order to prove the suit claim the plaintiff examined its employee Mrs.Kalpana Harshan, Assistnat Manger of the plaintiff company. She has stated about the scheme introduced by the plaintiff and defendant no.8 and document executed by the defendants. The evidence of this witness is in fact not seriously challenged on material points. The said witness has stated that defendants have executed the document viz. agreement dated 15-11-1974, hypothecation deed dated 15-11-1974 agreement dated 7-12-1983 between plaintiff and defendant no.1 and other documents. From evidence of plaintiff and documents on record it is very clear that as per agreement defendants received amount from the defendant no.8 from time to time and in that plaintiffs share was to the extent of Rs.4,58,143/-. The defendant nos.1 to 7 have not adduced any oral evidence in support of their contention.

8. Though defendants have contended that the suit filed by the plaintiff is not in time it is clear that the defendants acknowledged their liability and even executed necessary agreement P-17. Even from perusal of their letter dated 25-8-1984 it is clear that they in fact admitted dues and promised that they will discharge their liability. Not only that but admittedly when the suit was filed by no.8 against them, the defendant nos.1

to 7 compromised the said suit and consent terms were drawn in which also the plaintiff's liability is accepted. Not only that but admittedly the plaintiffs received some share out of money paid by the defendant nos.1 to 7 towards the said transaction.

9. Though it is tried to be argued by learned Advocate for defendant that plaintiff was not entitled to charge compound interest, if we see the contents of the agreement executed by defendants it is very clear that they had agreed to pay interest with quarterly rests. In other words, compounding of interest was permitted. So, plaintiffs were justified in calculating the interest accordingly and claiming amount that was due on the date of filing of the suit.

10. It is pertinent to note that while recording the evidence of the plaintiff's witness the leaned Counsel for both the parties agreed that dispute between the parties is in respect of original liability i.e. principal amount and rate of interest and therefore it was decided that there is no necessity of further cross examination. Both the learned Advocates have therefore restricted their arguments only on the point of interest and amount on which the same is to be charged. While considering the rate of interest and determining the amount that is now due from the defendants to the plaintiffs it has to be noted that admittedly after filing of this suit plaintiffs have received in all

Rs.11,26,000/- from the defendant no.8 out of amount which was deposited by the defendant nos.1 to 7 with defendant no.8. The claim in the suit is Rs.8,63,216/-. So, obviously the excess amount that has been received is towards the interest that is due from the date of filing of the suit.

11. Both the sides have produced before me (as directed by me) statements showing the calculation of the amount due from defendant as on today by charging interest at the rate of 12% p.a. It appears that according to the plaintiff he is entitled to get interest on amount of Rs.8,.632,216/- which was according to them the principle amount on the date of filing of the suit. As against this the learned Advocate for the defendants submitted that interest from the date of the suit be charged only on the principle amount i.e. basic amount which was advanced to the defendants and not the amount that was due to the defendants on capitalisation of interest.

12. Having regard to the facts and circumstances of the case and bearing in my mind that during pendency of the suit the defendants have in fact paid Rs.11,26,000/- it would be just and proper to direct the defendants to pay future interest at the rate of 12% p.a. on the basic principle amount which is Rs.4,95,000/- (as per statement by the defendants). So, I accept the statement given by the defendant nos. 1 to 7 marked

'X'. From the perusal of the same it is very clear that after calculating the interest at the rate of 12% p.a. from the date of suit on the principle amount and after adjusting the amount received by the plaintiff during pendency of this suit only Rs.1,58,390-30 are now due from the defendants nos 1 to 6. Hence I pass the following order.

. The defendants nos.1 to 7 to pay the plaintiff Rs.1,58,390-39 and future interest on the said amount at the rate of 9% p.a. from the date of decree till realisation of the amount. (the liability of the defendant nos.2 and 5 is only to the extent of estate of deceased D.H.Shah coming to their hands). The defendant nos.1 to 7 to pay the plaintiffs the cost of this suit and bear their own.

(S.R.SATHE,J.)